

This action arises out of a personal injury lawsuit filed by Plaintiff Jean G. Mintz in the Court of Common Pleas of Berks County, Pennsylvania (C.C.P. 6665-95-AD). The *pro se* complaint alleges (1) a federal claim against defendant Bell Atlantic refused to settle Plaintiff's case because of her gender, (2) a state claim asserting that the Attorney Defendants committed malpractice by not moving for a default judgment against one of the defendants, (3) a state claim against Defendant Pennsylvania Department of Transportation ("PennDot") for acting

negligently causing Plaintiff to have an accident and (4) and a federal claim against defendant Ludwig violated Plaintiff's right to procedural due process.

The same allegations as appear in the present Complaint were previously brought by Ms. Mintz against Bell Atlantic and the Attorney Defendants in a case before the Honorable Edmund V. Ludwig, Jr. of the Eastern District of Pennsylvania. Judge Ludwig dismissed the case for failure to state a claim under Fed R. Civ. P. 12(b)(6). Plaintiff has resubmitted the same claims and added the allegations against Defendants PennDot and Ludwig. The Court must first determine whether it has subject matter jurisdiction over Ms. Mintz' claims.

The federal claim against Bell Atlantic involves a gender-motivated refusal to enter into a settlement agreement. Such an allegation is not actionable under existing federal law. As Judge Ludwig wrote in his opinion, the only conceivable basis for such a claim is 42 U.S.C. § 1981. There the statutory prohibition of racially motivated refusals to contract by a private party includes disparate handling of claims. See Harris v. McDonald's Corp., 901 F.Supp. 1552, 1558 (M.D. Fla. 1995). However, §1981 does not encompass gender discrimination. See Runyon v. McCrary, 227 U.S. 160, 167 (1976). Since Bell Atlantic is not a state actor, 42 U.S.C. § 1983 is likewise unavailable.

The claim against Judge Ludwig states that he has intentionally deprived Jean Mintz of her procedural due process rights in violation of § 1983. However, Judge Ludwig, in his official capacity, considered Plaintiff's discrimination claim and properly dismissed it for failing to state a claim. He then declined to exercise supplemental jurisdiction over the Plaintiff's state law claims. Judge Ludwig is entitled to judicial immunity for actions taken in his official capacity. See Stump v. Sparkman, 435 U.S. 349 (1978). It is also established that this

common law immunity is in no way diminished in a proceeding under 42 U.S.C. S 1983. Pierson v. Ray, 386 U.S. 547 (1967). Ms. Mintz seems to believe that procedural due process requires that her case reach trial. However, due process is still met if the court considers a plaintiff's complaint and then dismisses the complaint for plaintiff's failure to state a claim. Therefore, the suit against Judge Ludwig is dismissed.

The Court finds that the Plaintiff has not stated any federal question claims that would allow it to exercise jurisdiction under 28 U.S.C. § 1331. Since all of the parties are residents of Pennsylvania, there is no possibility for the Court to exercise diversity jurisdiction under § 1332. As the Court does not properly have subject matter jurisdiction over any of the Plaintiff's allegedly federal claims, the Court declines to exercise Supplemental Jurisdiction under 28 U.S.C. § 1367 over the state law claims for malpractice and negligence.

Therefore, the Court dismisses the Complaint in its entirety.

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RONALD L. BUCKWALTER, J.